IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 219 OF 1999

(1). Shri R. G. Rao,
Vice-Principal,
I.T.I., Farmagudi,
Goa.

(2). Shri P. V. Shetkar,
Principal, I.T.I.,
Panaji-Goa.

(3). Shri A. S. Banastarkar,
Technical Officer,
Office of State Director
of Craftsmen Training,
Panaji-Goa.

(4). Shri R. H. Ghatwal,
Principal, I.T.I.,
Mapusa-Goa.

(5). Shri V. K. Khedekar,
Principal, I.T.I.,
Margao-Goa.

(6). Shri R. S. Siddarkar,
Assistant Apprenticeship
Advisor, Office of State
Director of Craftsmen
Training, Panaji-Goa.

(7). Shri Aleixo F. da Costa,
Principal, I.T.I.,
Cacora-Goa.

(8). Shri D. K. Chowgule,
Principal, I.T.I.,
Bicholim-Goa.

(9). Shri R. V. Monatkar,
Principal, I.T.I.,
Sattari-Goa.

(10).Shri Deepak Joshi,
Principal, I.T.I.,
Pernem-Goa.

(11).Shri S. V. Chari,
Principal, I.T.I.,
Canacona-Goa. ... Petitioners.

versus

(1). State of Goa,
through its Chief
Secretary, having
office at Secretariat,
Panaji-Goa.

(2). The Labour Commissioner
& State Director of
Craftsmen training of Goa,
Junta House, Panaji-Goa. ... Respondents

Mr. M. S. Sonak, Advocate for the Petitioners.

Mr. S. S. Kantak, Advocate General with Ms. R. Chodankar, Additional Government Advocate for the State.

CORAM : R. M. KHANDEPARKAR &
N. A. BRITTO, JJ.

DATE : 11TH SEPTEMBER, 2006.

JUDGMENT(Per N. A. Britto, J.)

The petitioners, in this petition filed under Articles 14, 16, 226 and 227 of the Constitution of India, inter alia, sought for a writ of mandamus or a direction to the respondents to fix their pay scale at Rs.8000-13500 w.e.f. 1-1-1996 along with consequential benefits. Their main grievance was that they being Group "B" Gazetted Officers of the respondents were being given the same pay scales as those of Group Instructors which were Group "C" posts under the Government of Goa and were otherwise feeder posts for promotion to the cadre of the petitioners and therefore the Government of Goa was treating unequals as equals in breach of Articles 14 and 16 of the Constitution of India.

2. The petitioners at the time of filing the petition were either holding the posts of Principal, Vice-Principal, Assistant Apprenticeship Advisor and Technical Officer(Training) which were all analogous posts in the same cadre and interchangeable in the scale of Rs.6500-10500. Since then petitioner nos.1 to 4, 8 and 11 have retired and petitioner no.3 is presently working as

State Director of Craftsmen Training. Petitioner No.5 is working as Principal, ITI Farmagudi, petitioner no.6 is working as Principal, ITI, Pernem, petitioner no.7 is working as State Director, Craftsmen Training and petitioner nos.9, and 10 are working as Principals of ITI, Panaji and ITI, Honda-Sattari, respectively.

3. The case of the petitioners was that their cadre was superior cadre as compared to that of Group Instructors under the same Department namely State Directorate of Craftsmen Training of Government of Goa and that in fact the Group Instructors were feeder category posts for the promotion to the posts of the Principals and the said other analogous posts. It was also their case that the said Principals were "B" Gazetted posts under the State Government and as such ineligible either for bonus or TBPS(Time Bound Promotional Scale) whereas the Group Instructors were "C" Non Gazetted posts under the State Government and as such were in receipt of bonus as well as TBPS and as such upon drawal of TBPS the salary of the Group Instructors exceeded the salary paid to the Principals. The petitioners claim for pay scale of Rs.8000-13500 w.e.f. 1-1-1996

(i.e. the date on which the pay scale of Fifth Pay Commission were introduced by the State Government) was based on communication No.DGET-12(20)/81-TC dated 8-6-81 by which the Deputy Director of Training on behalf of National Council for Training in Vocational Trades of the Government of India had requested all the State Governments(Departments dealing with Craftsmen Training Scheme) that the Government of India had accepted the recommendations of the National Council for Training in Vocational Trades and therefore they should take steps to implement the said decision in consultation with their State Finance Department. Their claim for pay scale in the sum of Rs.8000-13500 is based in view of item no.52 of the Training Manual of Industrial Training Institutes and Centers issued by the Government of India which makes the posts of Principal (Junior Scale)/Vice-Principal equivalent to Assistant Executive Engineer of the State concerned. The petitioners are aware that there is no post equivalent to Assistant Executive Engineer in the State Government and therefore have claimed the scale of Rs.8000-13500 because according to the petitioners that is the scale which the Assistant Executive Engineers are entitled to in the CPWD under the Government of India.

4. The Government of Goa acknowledged and admitted that the posts of Principal(Junior Scale), Vice-Principal, Assistant Apprenticeship Advisor and Technical Officer(Training) are analogous posts. The Government also admitted that the cadre of the said Principals(Junior Scale) is a superior cadre as compared to the cadre of Group Instructors in the Department and not only that during the pendency of the petition the Government of Goa by Orders dated 23-8-2002 and 28-3-2003 have ensured that the petitioners are given a pay scale of Rs.7500-250-12000 w.e.f. 1-1-1996. The Government has also introduced an Assured Career Progression Scheme to the posts of the Principals as well as the said Group Instructors. This has been conceded on behalf of the petitioners.

5. In the affidavit filed on behalf of the State Government it has been stated that the petitioners have no right to ask any particular pay scale. It is admitted that under the scheme of establishment of ITIs by the Directorate General of Employment and Training, Ministry of Labour, Government of India, the National Council for Vocational Training(NCVT) has been established as an affiliate body to set up and monitor the

functioning of ITIs in the country and it is stated that the said body NCVT issues guidelines/instructions and makes recommendations from time to time with regard to setting up of ITIs and the said guidelines/instructions are recommendatory in nature. It is stated that as per the Training Manual for Industrial Training Institutes and Centers issued by the Directorate General of Employment and Training, Ministry of Labour, Government of India, ITIs with seating capacity upto 399 seats are eligible for the post of Principals Group "B"(Junior Scale) and ITIs below 200 seats are to be managed by Superintendent(Non-Gazetted) but in the case of the State of Goa, uniformity has been brought by providing the post of Principals(Junior Scale) to all the State Government ITIs, irrespective of their seating capacity. The respondents do not dispute that as per the Training Manual, the post of Principal(Junior Scale) should be equivalent to Assistant Executive Engineer of the State but state that such a post of Assistant Executive Engineer does not exist in the State of Goa. It is stated that the existence of such post in other States or for that matter in CPWD is not known. It is stated that the pay scale of Central Engineering Service Group "A" of Central Government has no relevance to the pay scale of the post of Principal(Junior

Scale) of the Department of Craftsmen Training of the State of Goa. It is stated that after revision of the pay scale of the post of Principal(Junior Scale) from Rs.6500-200-10500 to Rs.7500-250-12000, the issue of equation of the post of Principal(Junior Scale) to the post of Assistant Engineer in the Public Works Department in the State of Goa has no longer remained an issue. It is stated that the Circular dated 8-6-1981 is suggestive in nature and is not binding on the State Government and as per the Training Manual, a right has been reserved to the State Government to frame its own Recruitment Rules and after the revision of the pay scales the question of treating unequals as equals does not arise. It is stated that the Training Manual does not suggest equation of the post of Principal(Junior Scale) to the post of Assistant Executive Engineer in CPWD. It is denied that the post of Principal(Junior Scale) was equated to the post of Assistant Engineer in PWD of the Government of Goa. It is denied that there are directions from the Central Ministry to give the post of Principal(Junior Scale) status of Group "A". It is stated that the plea of the petitioners to equate the post of Principal(Junior Scale) to some post which exists in CPWD in scale and status is unfounded and illogical. It is stated that the

scale and the status attached to the post of Principal(Junior Scale) is unique to the State of Goa and its Department of Craftsmen Training and therefore cannot be equated to the scale and status attached to the post in other Departments of the State or to any post existing in the Central Government and that there are no directions from the Government of Goa to accord the post of Principal(Junior Scale) the status of Group "A". It is stated that the State of Goa enjoys the statutory right to create the posts and assign pay scales and status to them, for the benefit of its employees.

6. Although, the petitioners pay scale has now been raised from Rs.6500-10500 to Rs.7500-250-12000 with all consequential benefits w.e.f. 1-1-1996 and to that extent the main grievance of the petitioners stands settled, Mr. M. S. Sonak, the learned Counsel on behalf of the petitioners has submitted that once the Central Government had accepted the recommendations of the NCVT for implementation and had directed the State Governments to implement the same it was not permissible to the Union Territory Administration to say that the said recommendations were not binding on them so as not to

follow the same. It is submitted that the Administration of the Union Territory had no separate existence apart from the Central Government and as such was bound by the decision taken by the Central Government and once the Central Government had accepted the recommendations of NCVT the Administration of the then Union Territory had no option but to implement the same and grant benefit of the said recommendation to the petitioners and as such it was incumbent upon the then Administration of the Union Territory to equate the post of the Principal(Junior Scale) to the post of Assistant Executive Engineer in terms of the recommendations of the NCVT. In support of his submission, Mr. Sonak, the learned Counsel has placed reliance on the case of **Goa Sampling Association** v. **General Superintendence Company of India Pvt. Ltd. and others** ((1985) 1 SCC 206) wherein the Supreme Court held that the expression appropriate Government to make reference under Section 10(1) and 2(A) of Industrial Disputes Act, 1947 in respect of industrial dispute raised by workmen of any industry located in an Union Territory was the Central Government being the appropriate Government for the purpose of making reference. The learned Counsel Mr. Sonak also placed reliance

on the case of **Alvaro Noronha Ferreira** v. **Union of India and others**((1999) 4 SCC 408) and submitted that the petitioners could not be deprived of the scale of Rs.8000-13500 being the scale which was applicable to the Assistant Executive Engineers in CPWD. On the other hand, Mr. S. S. Kantak, the learned Advocate General submitted that the writ of mandamus as sought for by the petitioners to give a scale of Rs.8000-13500 could not be issued by this Court in favour of the petitioners. The learned Advocate General further submitted that the petitioners' claim that they were being treated arbitrarily in relation to Group Instructors has already been set at rest by the State Government by revising the pay scale of the petitioners and therefore the petitioners claim that they would be entitled for equal pay for equal work also does not survive. Mr. Kantak further submitted that the Government did not accept the recommendations of the NCVT which were only of recommendatory nature and were not binding on the State Government.

7. Admittedly, the Union Territory of Goa, Daman and Diu became the State of Goa w.e.f. 30-5-1987 and thereafter it

is the prerogative of the State Government as to what scale or what status should be given to its employees. Although, the recommendations of NCVT were communicated to the State Governments way back on 8-6-1981 it appears that the petitioners had completely remained silent for over 15 years as regards the non implementation of the said recommendations till the Union Territory became the State of Goa. It appears that the first representation on behalf of the petitioners was made for the first time by communication dated 3-5-1993 as can be seen from letter dated 18-8-1993 by which the Director of State Craftsmen Training was informed that his proposal for revision of pay scales from Rs.2000-3500 could not be considered as policy decision required to be taken in the matter and he was further informed that the said proposal could be placed before the State Pay Commission as and when the same was constituted. By another communication dated 8-4-1994 the said Director of State Craftsmen Training was informed about the ban imposed by the Government and for that reason the proposal for revision could not be agreed to. By another communication dated 4-2-1994 all the Government Departments were advised to refrain from sending proposals till the receipt of the report of the Fifth

Central Pay Commission. The petitioners filed the present petition only on 30-1-1999. If the Training Manual for Industrial Training Institutes and Centers has recommended the post of Principal Group "B" for ITI with seating capacity upto 399 seats and a Superintendent(Non Gazetted) for ITI having below 200 seats, the Government of Goa has thought it fit and in order to bring uniformity, has provided the post of a Principal(Junior Scale) to all State Government ITIs, irrespective of their seating capacity. If the said Training Manual provided that the post of Principal(Junior Scale) should be filled in by 50% promotion and 50% direct recruitment, the Government of Goa has thought it fit that the post of Principal(Junior Scale) should be filled in by 75% promotion failing which by direct recruitment and 25% by direct recruitment, in terms of the rules published on Gazette dated 11-9-1986. The said Training Manual also gives liberty to the State Government to frame their own Recruitment Rules further specifying that the qualifications suggested were based on the Central Government Recruitment Rules. We are therefore inclined to accept the submission that the Government was free to accept or not the recommendations made by the NCVT which were accepted by the Central Government and communicated to

the State Governments including the Departments of Craftsmen Training and there was nothing binding as regards the said recommendations which either the then Administration of the Union Territory or the State Government subsequently was required to follow. As per the Manual, the post of the Principal (Junior Scale) had to be equivalent to Assistant Executive Engineer of the State and since there was no such post in the Union Territory or the State of Goa, the Union Territory/State of Goa was certainly entitled to frame its own rules and fix appropriate pay scale and status to the said post which was done by virtue of the rules framed and referred to hereinabove. The petitioners under no principle known in law can claim that their pay scales should be fixed equivalent to a post existing in CPWD with the Government of India and this claim of the petitioners is wholly unfounded. The petitioners scale having been enhanced by the State Government and their superiority restored vis a vis the cadre of Group Instructors in the Directorate of Craftsmen Training, nothing survives in this petition. If at all the Judicial Officers were granted parity of pay scales in the Union Territory of Goa with their counterparts in the Union Territory of Delhi in the case of **Alvaro Noronha Ferreira** v. **Union of India and**

others (supra) it was because earlier their pay scales were the same till the year 1982. The ratio of the said decision is inapplicable to the case at hand.

8. In changed circumstances, we find no merit in this petition and consequently the same is hereby dismissed with no order as to costs.

R.M.S.KHANDEPARKAR, J.

N. A. BRITTO, J.

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